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TESTIMONY OF CHARLES A. RYAN, ESQ.

REGARDING RAISED BILL NO. 325
AN ACT CONCERNING COMPLIANCE WITH THE REQUIREMENT OF THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT BY THE UNIT OWNERS' ASSOCIATION OF A COMMON INTEREST COMMUNITY WHEN FORECLOSING A LIEN ON A UNIT

My name is Charles Ryan. I am an attorney with an office in Watertown, CT. I have been practicing law since 2010 and my practice focuses almost entirely on representing Common Interest Communities throughout the State of Connecticut.

I am a member of the Connecticut Chapter of Community Association Institute ("CAI-CT"). I am a Member of CAI-CT's Education Program Committee, Conference Committee and the local chapter of the CAI's Legislative Action Committee. I am also a member of the CAI Lawyer's Council for CT.

My practice encompasses all aspects of Association representation and is not limited to debt collection. Accordingly I spend many nights at Board Meetings and Unit Owner Meetings discussing and resolving many issues that affect Connecticut's Common Interest Communities.

Please accept this testimony in opposition of Raised Bill No. 325. The Bill is unnecessary and will lead to more litigation in Connecticut.

Effective October 1, 2013 prior to commencing a foreclosure action against a Unit the Association must provide notice to any first or second mortgagee of record of the Association's intent to begin a foreclosure action. This notice must be sent at least 60 days prior to the commencement of the foreclosure.

This amendment to C.G.S. 47-258 has resulted in far fewer foreclosure actions in Connecticut. Although I was skeptical at first I must admit that this legislation is a win-win-win for Associations, Mortgagees and Unit Owners.

Raised Bill No. 325 would require the Association and its agents to comply with the "applicable provisions of the Federal Fair Debt Collection Practices Act..." while also requiring the Association provide 1st and 2nd mortgagees of record with a 60 day notice of its intent to begin a foreclosure action. These two requirements conflict with one another.

Raised Bill No. 325 is problematic and I urge the Bill be rejected for the following reasons:

1. The purpose of the Federal Fair Debt Collection Practices Act:

   FDCPA § 802. Congressional findings and declarations of purpose [15 USC 1692]

   (a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

   (b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

   (c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

   (d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

   (e) It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

   Raised Bill No. 325 does not further any of the concerns of the Federal Fair Debt Collection Practices Act. Instead it makes it more unclear as to what exactly is and is not a violation.

2. Associations are not debt collectors under the Federal Fair Debt Collection Practices Act ("FDCPA"). Therefore it is extremely unclear as to whether or not this Bill establishes that an Association is a debt collector.

3. A 1st or 2nd mortgagee is not a "Consumer" as defined pursuant to section 803(3) of the FDCPA and as such said mortgagees are not entitled to the protections afforded by the FDCPA. This is consistent with the Congressional findings above.

4. Most, if not all, mortgage contracts authorize the bank to satisfy liens against the mortgaged property in order to protect their security interest. As amended in 2013, C.G.S. 47-258(m) recognizes this contractual right and not only authorizes but specifically mandates the Association place the mortgagee on notice of the outstanding debt and its intent to begin a foreclosure if the debt is not paid within 60 days. This amendment has resulted in the reduction of foreclosure actions throughout Connecticut as mortgagees pay off the Association debt to avoid additional legal fees

and costs. Associations have reaped the benefits of receiving money owed to them while not having to begin costly foreclosure actions. The addition of Raised Bill No. 325 would prevent the Association from sending such notice to the 1st and 2nd mortgagees unless the debt is undisputed AND the homeowner consents – otherwise there is a violation of the FDCPA.

5. The inconsistency in the sentence alone is enough to reject Raised Bill No. 325. As amended, the pertinent section of C.G.S. 47-258(m) would read as follows: **"Not less than sixty days prior to commencing an action to foreclose a lien on a unit under this section, the association shall provide a written notice by first class mail to the holders of all security interests described in subdivision (2) of subsection (b) of this section, Such notice shall comply with the applicable provisions of the federal Fair Debt Collection Practices Act, 15 USC Section 1692 et seq., as from time to time amended, and any regulations adopted under said act, and** shall set fort the following…"

    a. The first half of the statute requires a notice be sent to all first and second mortgagees while the underlined section (proposed by Raised Bill 325) provides that if you do send notice to the first and second mortgagees you are in violation of the FDCPA unless you have the consent of the Unit Owner and he/she does not object to the debt.
    b. The adoption of Raised Bill No. 325 will create the unintended consequence of having a Unit Owner owe a debt, refuse to consent to the disclosure of the debt to his/her mortgagee AND leave the Association unable to begin a foreclosure because it cannot provide the required 60 day notice to the first and second mortgagees.

6. All foreclosure actions brought by associations must be brought by licensed attorneys. Each attorney is bound to act ethically pursuant to the Rules of Professional Conduct. Each attorney is a debt collector pursuant to the FDCPA and subject to its requirements and its penalties. The FDCPA already protects Unit Owners from abusive debt collection practices and goes as far as awarding Unit Owners monetary compensation without proof of actual damages - although actual damages are allowed as well.

7. The intent of this Raised Bill is unclear. Is it attempting to make an Association a debt collector? Is it attempting to make a property manager a debt collector? What about the self-managed volunteer Board that sends a notice to the Unit Owner to pay his or her debt? Should that volunteer Board Member be subject to civil penalties? I urge each of you to challenge yourself and ask "What is the purpose of Raised Bill No. 325? Who does it seek to protect? How does it accomplish that protection? What negative effect will it have on an Association and the citizens of Connecticut that are the Association?"

In closing, I have reviewed Raised Bill 325 and I urge that it be rejected. Raised Bill 325 does not offer a benefit to the consumer (unit owner) nor does it benefit a mortgagee and its contractual rights to protect its security interests. It is my professional opinion that Raised Bill No. 325 will create more uncertainty and lead to more litigation at a cost to all Unit Owners.

Respectfully submitted,

Charles A. Ryan, Esq.